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SUMMARY REPORT

1. An extraordinary session of the Working Group established to prepare Best Practices for Effective Enforcement (hereinafter "the Working Group") was held in hybrid format – in person in Rome and remotely via Zoom – from 23 to 24 September 2024. The Working Group was attended by 27 participants, including members, observers from intergovernmental and other international and academic organisations, independent observers, and representatives of the UNIDROIT Secretariat. A full list of participants is available in Annexe II.

Item 1. Opening of the session and welcome by the Chair and the Deputy Secretary-General

2. *The Chair* welcomed all participants, expressed her appreciation to the Secretariat and to all the experts who had contributed to the impressive amount of work achieved during the intersessional period, and acknowledged the challenge posed by the short time frame at hand, considering that a complete draft would have to be generated before the ninth session of the Working Group (2-4 December). She underlined the importance of finding appropriate solutions while considering the need to make compromises when necessary.

3. *The Deputy Secretary-General of UNIDROIT* also welcomed all attendees and reiterated the importance of maintaining momentum towards approval of the instrument by the Governing Council in May 2025. She further reported on the feedback that had been received after the presentation of part of the draft discussed at the eighth Working Group session to the Governing Council in May 2024 (namely, Sections III, IV, and V of Part I; the sections of Part II on enforcement of security rights on general recommendations, obtaining possession, disposition of collateral and the variation of the rules by agreement of the parties; and the part on enforcement on digital assets).

Item 2. Adoption of the agenda and organisation of the session

4. The Working Group unanimously adopted the revised agenda, available in Annexe I.

5. *The Chair* outlined the objectives for the two-day session and suggested to start with consideration of Section VI of Part I, Subsection 1 (a) and (b) on Enforcement on Tangible Movables and Third-Party Debt Orders, as well as Subsection 2 on Non-Monetary Enforcement. Further sections in Part I that could be discussed were Section XI on enforcement organs, which had raised interest on the part of some of the observer representatives who had provided input and comments, and Section XII on costs of the procedure. Additional documents to be discussed were the revised working draft of best practices on enforcement against digital assets and the new "Recommendation XX" on expeditious relief to support extrajudicial enforcement. Finally, in relation to Part II on enforcement of security rights, she suggested that the Working Group focus on the remaining sections on enforcement on security rights over receivables and security rights over immovables in the

intersessional period before the ninth session of the Working Group. Feedback from the Governing Council, which had been shared with participants, also needed to be addressed in the revised drafts as well.

Item 3. Consideration of work in progress

(a) Revised draft best practices regarding enforcement by way of authority (Study LXXVIB – Ext.W.G. – Doc. 3)

6. *The Chair* explained that Document 3, Section VI reflected numerous rounds of feedback from the Drafting Committee and the Working Group, and introduced the first item of discussion.

Section VI – Modes of Enforcement – Subsection 1 – lit. (a)

Section VI – Modes of Enforcement – Subsection 1 – lit. (a) - Recommendation 1

7. *The Reporters* introduced Recommendation 1 and highlighted the need for efficiency and proportionality in enforcement measures, ensuring that enforcement processes did not unduly harm debtors while effectively protecting creditors' rights. He further underlined the use of the word *"control"* rather than *"possession"* to provide more general applicability for the recommendations.

8. The Working Group agreed to add a reference to liquidity (how easily an asset's value would be realised) to paragraph IV.

9. The Working Group further agreed to add the word *"enabling"* to paragraph III, subparagraph (iii) and to add specific examples to the commentary as to the nature of the *"electronic restraints or monitoring"* mentioned in the recommendation. It was underlined that adding such examples would make the text more accessible, especially due to the developing nature of electronic restraints.

Section VI – Modes of Enforcement – Subsection 1 – lit. (a) - Recommendation 2

10. *The Reporters* then introduced Recommendation 2, addressing the legal consequences of taking control of movable assets. As its description clearly stated, the recommendation emphasised that the taking of control should create binding effects against debtors and third parties and ensure that enforcement respect the interests in the assets that had arisen before the seizure. The Reporters then highlighted the necessity for these effects to occur independently of the exact legal form of seizure, as characterised by national law. They noted that approaches in legal systems varied in respect to characterisation, with some adopting a public law approach while others followed private law parallels to "pawning" assets. To the purposes of the instrument, seizure ought to generate an attachment of a public nature, therefore determining the state's power to use the seized property in the creditor's interest without the debtor's consent.

11. The Working Group addressed the terminology used to describe the prohibitions on debtors and third parties regarding seized assets, suggesting that *"authorisation"* instead of "*consent*" might be more appropriate since it referred to a public authority's permission rather than the consent of the debtor.

12. The Working Group further underlined the importance of reviewing the usage of other specific terms (including the term "*interests*") throughout the whole draft and agreed on the necessity to run a check on the clarity (and possibility of translation) of the terms in various legal traditions.

Section VI – Modes of Enforcement – Subsection 1 – lit. (a) - Recommendation 3

13. *The Reporters* presented Recommendation 3, underlining the generally acknowledged principle that certain assets be exempted from enforcement in order to ensure the basic domestic needs of the debtor and family and the debtor's ability to continue its employment or business activity. It was emphasised that these exceptions were necessary to comply with modest standards of human dignity. The Reporters then highlighted the paragraph on professional-based exemptions, which included items of equipment or tools necessary for the debtor's employment, profession, or business.

14. The Working Group agreed that the concept of dignity was a fundamental principle underlying the exemptions. The Working Group then agreed to add medical equipment to the list, and to either rephrase certain expressions (e.g., *"necessary items of equipment"*) or introduce illustrations in the commentary to better circumscribe the exemption. The Working Group further discussed whether to include a category of "items with sentimental value", as provided for in many States' legislation, and agreed to add specific examples in the second paragraph of the commentary to clarify the scope of the exemption of items which had no significant financial value but might carry personal or sentimental value.

Section VI – Modes of Enforcement – Subsection 1 – lit. (a) - Recommendation 4

15. Recommendation 4 was meant to ensure that enforcement organs could effectively seize assets held by third parties while respecting the rights and claims of those third parties. The Reporters emphasised that when a third party had control or custody of a debtor's movable asset, the enforcement organ should inform the third party of its duty to cooperate and provide accurate information regarding the asset. In this particular regard, the crucial issue of determining the third party's claim to possession or ownership of the asset was taken into account.

16. *A member of the Working Group* observed that unless a third party's claim to entitlement to possession were grounded on sufficient facts or documents, the execution organ should proceed to seize the asset. The execution organ would have to notify the creditor of such claims. *The Reporters* clarified that it was suggested to use a third-party debt order to protect the rights of the creditor without unnecessarily impacting the valid claims of a third party.

17. Following a discussion within the Working Group on the wording in subsection III, it was agreed that this specific section was to be kept simple and straightforward, possibly sacrificing details for the sake of clarity.

18. *The Deputy Secretary-General* raised a point on the structure of the final instrument, highlighting that the placement of recommendations and commentary on online auctions, which had already been discussed at previous Working Group sessions, was yet to be decided.

Section VI – Modes of Enforcement – Subsection 1 – lit. (a) - Recommendation 5

19. *The Reporters* proceeded to Recommendation 5 on the realisation of value in seized movable assets, which was based on the principle that every enforcement organ should use the best means available to maximise the value of seized movable assets, including the option to utilise either public or private sale methods. Public sales, including sales on regulated markets, were highlighted by the Reporters as a primary method for realising asset value in the context of enforcement by way of authority. The Reporters noted that public sales should be pre-announced and conducted consistently with recommendations for online auctions, to ensure that potential bidders were adequately informed and could participate effectively.

20. While the Working Group generally agreed on the policy underlying the recommendation, a number of comments were made in respect to its wording and on specific issues addressed in the recommendation.

21. The Working Group agreed to incorporate into the black-letter text of paragraph II the more nuanced wording with respect to the default use of a public sale which was found in the commentary of Recommendation 5.

22. With regards to Paragraph III, the Working Group discussed valuation. The issue of the cost arising from contesting a valuation was raised, with the Working Group ultimately agreeing that this paragraph should cross-reference the section on costs, specifying that debtors were generally liable for the costs of enforcement. The Working Group further emphasised the importance of preventing parties from maliciously causing delays in enforcement by way of contesting or requesting valuation. While the recommendation's commentary already made extensive references to speedy processes, the Working Group asked the Drafting Committee to consider whether further clarification should be added.

23. The Working Group agreed that receivership should be considered a viable alternative for managing high-value assets, or assets or groups of assets that were difficult to sell, and debated on the conditions for appointment of receivers, among which authorisation from the enforcement court and limits on acts performed by the receiver.

24. The Working Group then requested that the commentary be clarified with respect to various specific points, including the reference to exemptions of the second transfer from tax law and the relationship between the parties' right to apply to the enforcement organ and the enforcement organ's discretionary power in paragraph VIII. *The Reporters* explained that paragraph VIII was supposed to be entirely neutral and its purpose was to clarify that it was impossible to transfer the asset unless the creditor agreed to it, with appropriate explanations to be found in commentary paragraph 7.

25. Upon a question raised by one *member*, the Working Group discussed the distinction between regulated and recognised markets, particularly with reference to digital assets, and agreed that it would be beneficial to undertake more research as to the appropriate definitions, in order to better understand whether a sale in a recognised market could still be categorised as a public sale. The *Reporter of Subgroup 3* agreed to provide clarifications to the Drafting Committee.

26. *The Deputy Secretary-General* finally invited all participants to send further comments to the Drafting Committee in order to improve upon its clarity, if necessary.

Section VI – Modes of Enforcement – Subsection 1 – lit. (a) - Recommendation 6

27. *The Reporters* introduced Recommendation 6 which dealt with the parties' realisation of the value of seized movable assets. The Reporters emphasised that creditors and debtors should be allowed to agree to dispose of seized assets by a method capable of maximising their value, which had several benefits including the ability to use specialised knowledge or networks to achieve higher sale prices, particularly for niche or high-value assets. The discussion highlighted that the enforcement organ should be informed of any such any agreement and that it should be carried out under the supervision of the enforcement organ to ensure compliance with legal requirements and protect the interests of all parties involved. The Reporters further noted that these agreements were only binding with the enforcement organ's consent, except in cases where the assets were of minor value. The Working Group further addressed the issue of determining what constituted *"minor value"* for the purposes of these agreements, which would be determined by the applicable domestic law.

28. The Working Group then raised a question regarding the reference to parties' agreement to rescind the seizure. After a thorough discussion, it was clarified that Recommendation 6 only applied in relation to ongoing enforcement proceedings and contained a specific application of the general principle of party disposition within continued enforcement proceedings. The Working Group agreed that the commentary could be clarified by reordering it, starting or ending with a clarification of the scope of the recommendation.

Section VI – Modes of Enforcement – Subsection 1 – lit. (b)

Section VI – Modes of Enforcement – Subsection 1 – lit. (b) - Recommendation 1

29. The Working Group appreciated the efforts made in revising the draft and commented on the structure of the document. In particular, the placement of third-party debt orders was questioned, since after being described as the "preferred form of monetary enforcement", they were placed second in the section on monetary enforcement. It was suggested that an introductory paragraph at the beginning of the section could explain the structure and its rationale. More generally, the Working Group suggested that the potential confusion between the scope of application of Section VI, Subsection 1, lit. (a) and the present recommendation be clarified in the introduction to the whole Subsection.

30. The Working Group then proposed to explicitly state in the commentary that the approach followed in this recommendation represented a best practice departing from other existing practices in some jurisdictions.

31. The Working Group finally noted that it would be beneficial to consider that the term "third-party debtor" might be used to include new intermediaries, such as digital wallet service providers, alongside traditional ones like banks, to ensure coherence across the instrument.

Section VI – Modes of Enforcement – Subsection 1 – lit. (b) - Recommendation 2

32. The Working Group suggested the correction of a clerical error in the first sentence of comment paragraph 2 ("creditor" instead of "debtor") since the recommendation dealt with damages were caused by the third-party debtor to the creditor. This prompted a discussion on whether the recommendation should also refer to the situations where the third party caused damages to the debtor by providing false information.

33. *The Reporter* then moved to note that the enforcement process required third parties to confirm the existence of the seized claim, its current amount, and any other relevant circumstances that might affect the creditor's ability to collect the debt. In the case in which a third-party debtor breached its duty of cooperation by failing or refusing to provide a declaration, or otherwise by giving a false declaration, it would be liable to pay damages to the creditor. Such liability was intended to cover any costs or losses incurred by the creditor due to the third-party debtor's non-compliance.

34. The Working Group then raised a question regarding the coherence with the digital assets provisions, in particular with reference to the terminology used in paragraph I of the recommendation. The Working Group pointed out the difference between the "*validity of the claim*" (as found in paragraph I) and the *"existence of the claim"* (as found in paragraph 1 of the comments). *The Reporter* observed that the use of the word "validity" applied to the claim's existence (declaring a claim) and non-existence (declaring no claim existed), and flexibility was required in handling cases where the third-party debtor disputed the validity of the claim. The Working Group then agreed that the enforcement organ be invested with a mandate to assess such questions and decide on the necessity of further action.

Section VI – Modes of Enforcement – Subsection 1 – lit. (b) - Recommendation 3

35. *The Reporters* explained the purpose of Recommendation 3, in particular its aim to enhance the effectiveness of third-party debt orders generally, and specifically in commercial cases. A third-party debt order should permit direct enforcement against a third-party debtor and, in the case in which the claim seized was not a monetary claim, the order should be deemed to be an enforceable instrument against the third-party debtor. The discussion highlighted that legal provisions should allow for the sale of the debtor's claim against the third-party debtor if the creditor so requested. The general rules on the sale of receivables should apply, and any additional costs arising from the sale, including deductions, should generally be borne by the creditor. The Reporters emphasised that this provision provided creditors with an alternative means of realising the value of the seized claim, and it streamlined the enforcement process in commercial matters by treating a lack of objection from the third-party debtor as an implicit acknowledgment of the debt. Finally, the Reporter noted that in commercial cases, if the third-party debtor did not provide a declaration, the creditor could apply for sanctions.

36. The Working Group did not raise any policy issues but asked that the term *"enforcement instrument"* be changed to *"enforceable instrument".*

Section VI – Modes of Enforcement – Subsection 1 – lit. (b) - Recommendation 4

37. *The Reporters* explained that Recommendation 4 addressed the opposition of third-party debtors to the seizure of a claim and its enforcement and outlined the procedures for handling situations where a third-party debtor disputed the validity of the claim or the enforcement action.

38. The Working Group highlighted potential inconsistencies in terminology and entrusted the Drafting Committee to thoroughly check the use of the terms "creditor", "debtor" and "third-party debtor" in the entire instrument, as well as to consider clarification of the expressions "validity" and "legal validity" used in Recommendations 2 and 4. *The Chair* recalled that a revision of the text to avoid inconsistencies would be carried out by the Drafting Committee at a later stage.

Section VI – Modes of Enforcement – Subsection 1 – lit. (b) - Recommendation 5

39. *The Reporter* then turned to Recommendation 5, which was a provision parallel to Recommendation 3 in Subsection 1 lit. (a) on exemptions from seizure of claims with a view to protecting the debtor's and his family's basic domestic needs.

40. In the ensuing discussion, the appropriateness of using the word "*family*" was questioned, with a suggestion to substitute it with "*household*" (also referencing other international instruments), or "*dependents*" (which was, however, criticised by other Working Group members). It was finally recommended that the commentary take appropriate measures to ensure that the term chosen be explained to ensure its definition was not too broad, which would defeat the purpose, and that the wording be consistent with other recommendations referring to the same issue.

Section VI – Modes of Enforcement – Subsection 1 – lit. (b) - Recommendation 6

41. There was general agreement that legislators should promote the digitalisation of enforcement procedures and that an automated process that operated based on court decisions should be in place.

42. The Working Group discussed the need to ensure that the recommendation not impose on States to introduce new legislation, as the purpose of the recommendation could also be reached – depending on the legal system – through an appropriate use of the existing legislative framework (including the appropriate use of the principle of functional equivalency). It was suggested that the

term "legislator" could be substituted by "State". It was noted that the impersonal language used in Recommendation 6, paragraph II already avoided placing the burden directly on legislators and allowed for flexibility within existing rules. It was further suggested that the commentary acknowledge existing examples of automation in garnishment processes to show that the proposed changes were not entirely new but rather an extension of current practices.

43. A further issue raised during the discussion concerned the structure of the instrument. It was queried whether general principles on automation in enforcement should be mentioned in the general part of the instrument since they would apply in different contexts. The issue was left open by the Working Group, which entrusted its consideration to the Drafting Committee.

44. The Working Group raised some concerns as to the level of detail of the recommendation. It was decided that this issue should be reconsidered once all parts of the instrument were finalised, as there could be cross-references to more detailed provisions.

Section VI – Modes of Enforcement – Subsection 1 – lit. (b) - Recommendation 7

45. *The Reporters* started by clarifying the relationship between freezing orders and similar mechanisms, such as third-party debt orders, through an analysis of the historical context of these remedies, noting how freezing orders were more intrusive than traditional seizure methods, as they could broadly affect all accounts associated with a debtor. The Reporters also underlined the importance of proportionality when considering the use of freezing orders, as they should only be employed when absolutely indispensable in order to limit their impact on individuals and their privacy.

46. The recommendation generated much discussion. The Working Group addressed the complexities deriving from the potential, and not uncommon, extraterritorial use and effect of freezing orders, which were issued *in personam* and therefore could well have ramifications for the debtor's or third-party debtors' assets regardless of where those assets were located. Particular attention was given to the implications that this might have on enforcement on digital assets. It was, however, pointed out that the extraterritorial enforceability of these orders varied by country. The Working Group suggested that while it was crucial to acknowledge the complexities of freezing orders, the specifics could be addressed in a more general section about provisional orders rather than in this particular recommendation.

Section VI – Modes of Enforcement – Subsection 2 – lit. (a)

Section VI – Modes of Enforcement – Subsection 2 – lit. (a) - Recommendation 1

47. The Working Group opened the discussion with a remark on the structure of the document: in particular, it was suggested that a brief introductory paragraph be added between the title subsection, in this case "*monetary enforcement*", and the subtitle, "*enforcement on tangible movables*". The Working Group also questioned the use of the word "*possession*" rather than "*control*", the potential different meanings of the word "*possession*" throughout the draft, and the choice of not specifying whether the item in question was a tangible or intangible asset. This was also underlined in relation to the applicability of the recommendation to digital assets, and in relation to the subsequent Recommendation 3. *The Chair* reminded the Group that such a discussion had already taken place and referred the matter to the Drafting Committee, with due consideration of the comments of the Reporters, who proposed to clarify the issue in the commentary of Subsection 1 lit. (a) Recommendation 3.

Section VI – Modes of Enforcement – Subsection 2 – lit. (a) - Recommendation 2

48. The Working Group questioned the clarity of Paragraph IV in Recommendation 2. It was pointed out that while Paragraph V allowed a third party to contest the enforcement with a well-

founded basis, Paragraph IV seemed ambiguous about the grounds on which a third party might oppose surrendering possession. According to *the Reporters*, the enforcement organ's assessment was usually necessary to determine whether there was a plausible reason for the third party's opposition or lack thereof.

Section VI – Modes of Enforcement – Subsection 2 – lit. (a) - Recommendation 3

49. *The Reporters* stated that this recommendation had been revised to reflect the discussions at the eighth Working Group session, and that there were no substantive changes. The Reporters then pointed out specific revisions, such as the clarification in Paragraph III regarding the storage of property not removed following enforcement.

Section VI – Modes of Enforcement – Subsection 2 – lit. (a) - Recommendation 4

50. *The Reporters* noted that Recommendation 4 originally bore the misleading title "*simplified proceedings*", which was changed to "*formal record of the condition of movable assets and immovables*" to better reflect its content.

51. In the ensuing discussion, the importance of the second paragraph of the comment was highlighted, which explained that the record promoted efficient proceedings by facilitating evidence and acting as a preventive measure.

Section VI – Modes of Enforcement – Subsection 2 – lit. (b)

Section VI – Modes of Enforcement – Subsection 2 – lit. (b) - Recommendation 1

52. The Working Group questioned the distinction between enforceable instruments and enforcement orders, with various members of the Working Group noting that the enforceable instrument should state what the debtor must do or refrain from doing, while the enforcement order's aim was to compel the debtor to comply with such obligations. *The Reporters* clarified that the enforceable instrument established the initial obligation, while the enforcement order was issued when the debtor failed to comply. A proposal was made to merge the first two sentences of paragraph I to clearly link the enforcement order to the obligations in the enforceable instrument, or/and to include an illustration in the commentary to better clarify the relationship between the enforceable instrument and the enforcement order. The Working Group provided the example of the sale of a unique item where the enforceable instrument required the seller to sell the item to the buyer, and the enforcement order might instruct the seller not to sell the item to someone else. *The Reporters* agreed that adding a concrete example could enhance understanding; however, this should be done with caution as the example related more to the broader enforcement of titles and sanctions for hindering enforcement, which was covered in another part of the draft instrument on the debtor's duty of cooperation and related sanctions.

Section VI – Modes of Enforcement – Subsection 2 – lit. (b) - Recommendation 2

53. The Working Group questioned the choice of the verb in "*effectuate"* an obligation versus "*perform"* an obligation, to which *the Reporters* responded that "*effectuate*" had been chosen on purpose to imply that broader actions might be required beyond mere formal compliance with the obligation, and that the term was not meant to include substantive decisions such as voting in a company. The Working Group further proposed to clarify in the commentary when the effect of the enforceable instrument, as mentioned in paragraph I, would arise, and to reflect that the execution court determined the most appropriate measure to apply.

(b) Revised draft best practices regarding enforcement of security rights (Study LXXVIB – Ext.W.G. – Doc. 4)

54. *The Chair* recalled that most of the content of Document 4 had been reviewed multiple times by the Working Group and approved in principle. Comments received by the Secretariat at the Cape Town Academic Project Conference had also been incorporated. There were, however, a few open points where substantive decisions still needed to be taken or where there was new material that the Working Group needed to consider.

55. *The Reporter* introduced "Recommendation XX" by explaining that it would be integrated in Part II, in alignment with recommendations from the UNCITRAL Legislative Guide on Secured Transactions and the UNCITRAL Model Law, specifically recommendations 1, 3, 8, and Article 74. The recommendation aimed to establish a specific procedure for securing expeditious relief in support of extrajudicial enforcement.

Doc. 4 – Recommendation XX – paragraphs I-II

56. *The Reporter* underlined that the purpose of the recommendation was to maintain the extrajudicial nature of enforcement while providing a means to address obstacles that might impede it. The introduction of the first paragraphs of Recommendation XX focused on its aim to establish a concentrated, expeditious, and simple procedure for execution courts to handle matters related to the support of extrajudicial enforcement.

57. The Reporter introduced paragraph II, specifying that the notices in question needed to be given to the debtor or any third party concerned, with an exception made when giving notice would otherwise frustrate the application, such as the case where it would allow a debtor to move property out of the jurisdiction. The Reporter specified that all detailed rules of notice would not be repeated in this recommendation, as they were already covered in other sections of the draft instrument, but a cross-reference would be included.

58. *The Deputy Secretary-General* noted that evidentiary thresholds and predictability for creditors in this procedure needed to be further clarified, as creditors needed clear guidelines on what evidence was required to obtain an order, along with indication as to who should bear the burden of proof.

59. It was also suggested that cross-references to the part on digital assets could be added to paragraph I as well, and that while the recommendation referred to obtaining possession of tangible and intangible property, it might benefit from explicitly mentioning digital assets, to avoid confusion for readers. *The Reporter* reminded the Working Group that while Recommendation XX applied to the disposition of collateral, the process of obtaining control over digital assets was to be covered in the digital assets part. The Working Group was generally in favour of this approach, highlighting that the expeditious relief should indeed apply to enforcement on digital assets as well but required specific clarifications and adaptations that were better suited to Part III of the draft instrument. The final consensus was to add a sentence in the commentary to direct readers to the relevant part of the instrument that dealt with digital assets, thereby avoiding confusion for readers.

Doc. 4 – Recommendation XX – paragraph III

60. As per *the Chair*'s input, *the Reporter* introduced paragraph III, detailing the court's options to support extrajudicial enforcement, in particular ordering compliance with enforcement provisions in the agreement, issuing orders similar to regulatory provisional measures (such as protective orders or injunctions), and promoting settlement efforts.

Doc. 4 – Recommendation XX – paragraphs IV-V

61. *The Reporter* moved on to paragraph IV, focusing on the idea that orders made under such procedure ought to specify that compliance was to be carried out within a limited period of time to ensure that the process remain expeditious. Moving on to paragraph V, the Reporter explained that it clarified that orders could only be made under this procedure to support extrajudicial enforcement, ensuring that it would not be transformed into a judicial process.

Doc. 4 – Recommendation XX – paragraphs VI- VII

62. Paragraph VI specified when orders might be issued under paragraph III. The wording had been slightly adjusted to make it clear that orders could be granted when all relevant facts were either proven, undisputed, or not seriously disputed, giving the procedure a narrow scope. As to paragraph VII, *the Reporter* explained that it elaborated on the requirements for granting orders under paragraph III (b), specifically as to how the execution court needed to handle applications expeditiously and in a summary manner.

63. A discussion then followed with regards to the clarity and predictability of the term *"not seriously disputed". The Deputy Secretary-General* noted that at the Cape Town Convention Academic Conference, the interpretation of this specific term had been questioned, especially as to its implications for creditors seeking predictability in the application of the procedure. *The Reporter* suggested that while the current language provided broad guidance, an enacting state would need to refine this language to fit its procedural rules and standards of proof. It was added that the intention was to signal to legislators that spurious or purely formal objections should not suffice to block the granting of orders. *A member of the Working Group* suggested that the term *"not seriously disputed"* might be better understood as "*not credibly disputed*", proposing that this would more accurately reflect the intent. He noted that the French translation would be *"pas sérieusement contesté",* which implied that disputes needed to be credible and substantive. *The Reporter* pointed out that the language should indicate that the dispute must have substance and be supported by credible reasons, therefore proposing that "*not credibly disputed"* could capture the essence of what was intended. *The Deputy Secretary-General* suggested that an example in the commentary could help clarify the meaning of "not seriously disputed", making it more tangible for practitioners. It was then left to the Drafting Committee to further edit the section and add proper examples in the comments.

Doc. 4 – Recommendation XX – paragraph VIII

64. *The Reporter* commented on paragraph VIII by emphasising its importance in giving enforcement power to the procedure, ensuring that orders made under the recommendation could be enforced using sanctions for non-compliance. The Reporter underlined that in common law these sanctions were typically known as “contempt of court” but that, recognising that not all jurisdictions used this concept, the paragraph also included a reference to *"equivalent judicial proceedings"* aimed at ensuring the proper administration of justice.

(a) Revised draft best practices regarding enforcement by way of authority (Study LXXVIB – Ext.W.G. – Doc. 3)

Section XI – Enforcement Organs

Section XI – Enforcement Organs - Recommendation 1

65. *The Reporter* underlined that enforcement organs should be invested with public authority and considered as a part of the administration of justice. Enforcement agents should fall under the

same general regulatory framework, whether they came from the private sector or were public servants.

66. The Working Group questioned the distinction between professional bodies representing enforcement agents and those responsible for their regulation and supervision. Professional organisations often served dual roles: representing members and regulating them through bylaws covering ethical rules, disciplinary actions, and liability insurance. *The Reporter* clarified that Recommendation 1 specifically addressed regulatory bodies, noting that representative bodies would fall outside the scope of the best practices. An additional section in the commentary, however, was proposed to clarify that regulation and supervision could be conducted by either representative bodies with regulatory functions or by regulatory bodies, according to State law.

67. *A member of the Working Group* suggested including references to ethical and disciplinary rules, to which *one of the Reporters* replied that paragraph VII already addressed ethical considerations. It was proposed to add a clarification after the word "*regulation*" in paragraph IX (i) to include ethical and disciplinary rules.

68. *A representative of an observer Organisation* emphasised the importance of this section for countries in Eastern Europe and Central Asia and suggested that paragraph VIII could explicitly mention complaint mechanisms, particularly for private enforcement agents; she further queried about limiting the percentage of cases received from a single creditor, to ensure accountability and transparency. *Another observer* echoed the comment by explaining the development of professional standards akin to ISO certification for enforcement agents, which included limitations on the number of cases an enforcement agent could receive from a single creditor to ensure independence. *The Reporter* supported the idea of adding a reference to professional standards.

69. It was further suggested that the word "*law firm*" be changed to "*creditor*" in paragraph IX (iv), to better reflect the source of cases, on which there was agreement in the Working Group, with a clarification that most cases came directly from creditors. After discussion in the Working Group, *the Reporter* suggested to completely eliminate the example but to keep the first two sentences of paragraph IX (iv). *The Chair* closed the discussion by reminding the Working Group of the need to include additional clearer examples and to state that the principles of independence and impartiality should guide enforcement agents' practices.

Section XI – Enforcement Organs - Recommendation 2

70. *The Deputy Secretary-General* thanked the Reporters who worked on the recommendation, recalling that this issue had benefited from considerable input and research from some Observers, and emphasised that attention had to be given to whether terms such as "mixed systems" should be used, as they might be misleading. She invited all participants to provide written comments if possible.

71. A concern was raised about the alignment of this recommendation with the rest of the best practices, to which *the Reporter* replied that any written comment could be sent to the Drafting Committee and then would be integrated to the greatest extent possible.

Section XI – Enforcement Organs - Recommendation 3

72. *The Chair* informed the Working Group that during the session of the Drafting Committee that took place before the Working Group session, it had been decided to remove the term "*internship*" from the title, therefore leading to the new title: "*Legal education, vocational and professional training*". *The Reporter* explained that “vocational training” was a broader term which included internships and other forms of practical training.

73. *A member of the Working Group* suggested to avoid the mention of a specific time for the training period in the commentary, referring instead to a training period which should be reasonable and sufficiently long to ensure the acquisition of necessary skills. *The Chair* left it to the Drafting Committee to refine the wording, recalling that a key objective was to retain applicability in as many jurisdictions as possible.

Section XI – Enforcement Organs – Recommendation 4

74. *The Reporter* clarified that the recommendation was based on practices already existing in many States and served as encouragement for their adoption. While enforcement agents could act as mediators to reach an agreement between the parties, they should not undermine court judgments by suggesting they were incorrect. It was further explained that change had been made during the Drafting Committee meeting, specifically in Paragraph IV, with the removal of the term "*honestly*".

75. *The Deputy Secretary-General* reminded the Working Group of the necessity to strive for consistency, recalling that in earlier parts of the draft instrument the reference to vulnerability of debtors and their families had been deleted from the recommendations and inserted instead in the commentary. The Working Group agreed and reiterated the importance of using terms such as "*family*" and/or "*household*" consistently.

76. Taking into consideration the suggestions received, *the Reporter* proposed to delete Paragraph III of Recommendation 4 entirely, and then add a specific example on mediation in the commentary. *The Chair*, however, decided not to take an immediate decision on Paragraph III.

Item 4. Structure of the final instrument

77. *The Chair* opened the discussion on the structure of the instrument, underscoring that an agreed draft structure would have to be ready before the December 2024 Working Group session. The conversation shifted to the remaining sections that needed to be addressed: Sections VIII, IX, and X, for which it was proposed to organise a schedule for finalisation, together with Sections I and II of Part I, which had initially been drafted in a rudimentary manner and then set aside until the rest of the sections were finished. It was further noted that it would be necessary to improve the language in Section I, while noting that Section II had already undergone a preliminary revision.

78. The placement of two other topics, namely enforcement on digital assets and the impact of technology on enforcement proceedings, was then thoroughly addressed by the Working Group, in particular as to whether these topics should be kept as a stand-alone section or integrated into the main body of the text. In the discussion, two options for the topic of the impact of technology on enforcement were identified, namely (i) maintaining a separate chapter with a narrative part and specific recommendations on online auctions, or (ii) drafting a part of the introduction to the instrument that discussed the relationship between technology and enforcement, and then placing specific recommendations within existing parts of the instrument. The right place for the recommendations on online auctions was discussed, as it would be possible to integrate these recommendations into the existing structure without disrupting the coherence of Part I. *The Deputy Secretary-General* pointed out that some legal systems, even within Europe, did not yet permit online auctions, which justified including specific recommendations to encourage the adoption of such modern methods of disposal, while part II on enforcement of security rights already contained reference to online auctions.

79. *The Chair* expressed concern about introducing too much information on technology in the introduction and suggested that a section on technology tools could be included, along with a separate part on digital assets. The Working Group agreed to refer this discussion to the Drafting

Committee in order to come up with a proposal to be discussed at the ninth Working Group session in December 2024.

Item 5. Organisation of Future Work

80. *The Deputy Secretary-General* reminded the Working Group that UNIDROIT instruments were required to have a version in both official languages (English and French). She mentioned the offer by the Chair to look into the possibilities of providing a translation into French in time for the consultations and for the finalisation of the instrument, which would, however, require finalisation of the English version well before the end of the year.

81. *The Chair* recalled that the ninth session of the Working Group was scheduled to be held from 2 to 4 December 2024. She also recalled that the finalised instrument should be presented to the Governing Council for approval in May 2025, and that a consultation period should be scheduled between finalisation of the first completed draft and final submission.

82. *The Deputy Secretary-General* expressed her gratitude on behalf of UNIDROIT for the extraordinary efforts of the Working Group's members and observers, and she urged all participants to continue their work intersessionally. She thanked her colleagues at UNIDROIT for their cooperation and voiced the heartfelt thanks of the whole of the Working Group for the guidance provided by the Chair. *The Chair* thanked all participants and the Secretariat for their hard work and, in the absence of any other business, declared the session closed.

ANNEXE I

AGENDA

1. Opening of the session and welcome by the Chair of the Working Group and the Deputy Secretary-General

2. Adoption of the agenda and organisation of the session

3. Update on status of the project (oral presentation)

4. Consideration of work in progress:

   (a) Revised draft best practices regarding enforcement by way of authority (Study **LXXVIB** – Ext.W.G. 2024 – Doc. 3) – *to be confirmed* – Sections III [enforceable instruments]; IV [information on debtor's assets]; V [digital registration]; VI subsection 1 [monetary enforcement] a) [enforcement on tangible movables] and b) [third-party debt orders], and subsection 2 [non-monetary enforcement]; IX [provisional measures securing enforcement]; XI [enforcement organs]; and XII [costs]

   (b) Revised recommendation regarding expeditious relief for extra-judicial enforcement (Study LXXVIB – Ext.W.G. 2024 – Doc. 4 – Recommendation XX)

   (c) Revised draft best practices regarding enforcement of security rights (Study **LXXVIB** – Ext.W.G. 2024 – Doc. 4) – *to be confirmed*

   (d) Revised draft best practices regarding enforcement on digital assets (Study **LXXVIB** – Ext.W.G. 2024 – Doc. 6)

5. Structure of the final instrument and discussion of introduction to part on technology and enforcement (Study **LXXVIB** – Ext.W.G. 2024 – Doc. 5)

6. Translation of the Best Practices into French

7. Organisation of future work (including preparation for the ninth session of the Working Group, consultation phase)

8. Any other business

9. Closing of the session

ANNEXE II

LIST OF PARTICIPANTS

EXPERTS

Ms Kathryn SABO (Chair)	Deputy Director General & General Counsel Constitutional, Administrative and International Law Section Department of Justice (Canada)
Mr Neil COHEN	Jeffrey D. Forchelli Professor of Law Brooklyn Law School (USA)
Ms Valeria CONFORTINI	Professor of Law Università degli Studi di Napoli "L'Orientale" (Italy)
Mr Fernando GASCÒN INCHAUSTI	Professor of Procedural and Criminal Law Universidad Complutense Madrid (Spain)
Mr LIU Junbo *(excused)*	Professor of Civil Procedure Law School of Central University of Finance and Economics (China)
Ms Carla L. REYES *(excused)*	Assistant Professor of Law SMU Dedman School of Law (USA)
Mr Fábio ROCHA PINTO E SILVA	Pinheiro Neto Advogados (Brazil)
Ms Teresa RODRIGUEZ DE LAS HERAS BALLELL	Associate Professor of Commercial Law Universidad Carlos III Madrid (Spain)
Ms Geneviève SAUMIER	Dean Faculty of Law Université de Montréal (Canada)
Mr John SORABJI	Associate Professor UCL
Mr Felix STEFFEK	Professor of Law Faculty of Law University of Cambridge (UK)
Mr Rolf STÜRNER	Emeritus Professor of Law, Albert-Ludwigs-Universität Freiburg (Germany)

OBSERVERS

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	Ms Veronica BRADAUTANU Principal Counsel Legal Transition Team
	Ms Patricia ZGHIBARTA Legal Consultant LTP Dispute Resolution Team
EUROPEAN COMMISSION	Mr Jacek GARSTKA Head of General Justice Issues, e-Justice Unit
HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW (HCCH)	Ms Ning ZHAO Principal Legal Officer
SECURED FINANCE NETWORK	Mr Richard KOHN Goldberg Kohn Ltd.
SUPREME PEOPLE'S COURT OF CHINA	Ms ZHU Ke Judge Fourth Civil Division
UNION INTERNATIONALE HUISSIERS DE JUSTICE (UIHJ)	Mr Jos UITDEHAAG First Vice President
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL)	Ms Samira MUSAYEVA Senior Legal Officer Secretary, Working Group V (Insolvency Law) International Trade Law Division
	Ms Maria-Angeliki GIANNAKOU Associate Legal Officer
WORLD BANK GROUP (WBG)	Mr Fernando DANCAUSA Finance, Competitiveness & Innovation
	Ms Antonia MENEZES Senior Financial Sector Specialist

INDIVIDUAL OBSERVERS

Mr Massimiliano BLASONE	Italian Partner European Collection and Enforcement Network (CONNEXX)
Ms Anna SKRJABINA	Independent consultant Latvia

Ms Diana Lucia TALERO	Secretaria Técnica Comité de Implementación de Garantías Mobiliarias (Colombia)

UNIDROIT

Mr Ignacio TIRADO *(excused)*	Secretary-General
Ms Anna VENEZIANO	Deputy Secretary-General
Mr Emanuele TARTAGLINI	Intern